STATE OF MICHIGAN

COURT OF APPEALS

JAMES M. DOYLE LIVING TRUST, Plaintiff-Appellant, v CHRISTIAN G. KRUPP, II, and SUSAN L. KRUPP, Defendants-Appellees.	UNPUBLISHED August 16, 2005 No. 261823 Kent Circuit Court LC No. 05-000550-CZ

Before: Zahra, P.J., and Cavanagh and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants' motion for summary disposition in this declaratory judgment action to preclude defendants from building a home on a subdivision parcel split from an adjoining parcel. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case involves a property dispute among neighbors in a subdivision. Plaintiff is the record owner of Lot 2 of the Mercer Heirs Subdivision. At the time of the initial conveyance, the deed for Lot 2 contained certain building restrictions. The restrictions state in pertinent part that:

> (d) The only building to be erected on this lot, shall be one, one family dwelling house to be used for dwelling purposes only, to cost not less than $10,000.00 exclusive of the lot.

Defendants' predecessors in interest purchased Lots 3 and 4 of the subdivision and constructed a home that was built partly on Lot 3 and partly on Lot 4.[1] In 1977, George and Dawn Krupp, the parents of defendant Christian Krupp, purchased this home, the two lots, and a portion of the initial subdivision not involved in this appeal. Later, they sought to convey a portion of Lot 4 to their son so he could build a home. In 1991, the Krupps petitioned the trial court in equity for a determination that the lot was buildable. The trial court ultimately dismissed the action, finding

[1] The parties have not furnished this Court with a copy of the deed to Lot 4. However, according to both parties, a similar restriction is included by reference in the deed to Lot 4.

that, despite the fact that building an additional home on Lot 4 would result in two homes on two lots, the building restrictions were clear and prohibited this action. The trial court noted that the Krupps could seek to amend or vacate the subdivision plat. However, the trial court found that this could not be done in the context of an action to quiet title pursuant to MCL 600.2392(1), but would instead have to be brought as an action under the Subdivision Control Act, MCL 560.101 *et seq*.

Subsequently, defendants initiated a property split under the Act. On August 13, 2003, the Grand Rapids Charter Township approved a lot split concerning Lot 4 pursuant to MCL 560.263 and its land division ordinance.[2] On January 4, 2004, George and Dawn Krupp conveyed this parcel to defendants. Defendants then purchased a portion of an adjoining subdivision from a third party in December 2004 to meet township setback requirements. This land was added to defendants' property in January 2005 by action of the township.[3]

Defendants received a building permit and began to ready the property for construction. Plaintiff filed suit to enjoin defendants from building on this property. Defendants filed a motion for summary disposition. The trial court granted the motion, holding that the township had effectively created a new lot and that this action gave defendants the ability to build on the new parcel irrespective of the prior deed restrictions.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

On appeal, plaintiff maintains that the trial court erred in granting defendants' motion for summary disposition, and argues that defendants should be enjoined from building a second house on what was once a portion of Lot 4. We disagree.

Public policy favors building and use restrictions in residential deeds. *Rofe v Robinson (On Second Remand)*, 126 Mich App 151, 157; 336 NW2d 778 (1983). However, restrictive covenants are strictly construed against grantors and the parties seeking to enforce the covenants. All doubts are to be resolved in favor of the free use of property. *O'Connor v Resort Custom Builders, Inc*, 459 Mich 335, 341-342; 591 NW2d 216 (1999); *Stuart v Chawney*, 454 Mich 200, 210; 560 NW2d 336 (1997). Courts should not infer restrictions that are not expressly provided

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[2] MCL 560.263 provides:

> No lot, outlot or other parcel of land in a recorded plat shall be further partitioned or divided unless in conformity with the ordinances of the municipality. The municipality may permit the partitioning or dividing of lots, outlots or other parcels of land into not more than 4 parts; however, any lot, outlot or other parcel of land not served by public sewer and public water systems shall not be further partitioned or divided if the resulting lots, outlots or other parcels are less than the minimum width and area provided for in this act.

[3] According to the plaintiff, the township ultimately gave this parcel a new tax ID number and a new street and house number.

for in the controlling documents. *O'Connor, supra* at 341, citing *Margolis v Wilson Oil Corp*, 342 Mich 600, 603; 70 NW2d 811 (1955); *Stuart, supra.*

The trial court did not err in holding that the deed restriction did not bar defendants' actions. The deed restrictions permit only one house per lot, but do not contain specific language prohibiting the division of a lot. Plaintiff does not challenge the township's ability to change lot lines or to divide Lot 4 pursuant to MCL 560.263. Thus, we find no basis for a conclusion that the deed restrictions bar defendants' proposed development. *O'Connor, supra*; see also *Schoolcraft Civic Ass'n v Diloreto*, 339 Mich 121, 125-129; 62 NW2d 657 (1954). In addition, we note that plaintiff will not be subject to greater housing density than what was initially proposed due to the fact that the existing home lies on two lots. Any intent of the developer to restrict housing density is not frustrated by the township's actions of essentially moving a lot line. Moreover, plaintiff's parcel does not abut the newly created parcel. Plaintiff will lose neither view nor adjacent land area as a result of the construction.

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Donald S. Owens